

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

JOHN L. WERNER, M.D.
312 Emerson
Upland, California)

No. D-1948

Physician's and Surgeon's
Certificate No. G 13437,)

L-13759

Respondent.)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Division of Medical Quality, Board of Medical Quality Assurance as its Decision in the above-entitled matter.

A copy of section 11522 of the Government Code and a copy of the Division of Medical Quality, Board of Medical Quality Assurance's Criteria Relating to Rehabilitation are appended hereto and made a part hereof.

This Decision shall become effective on the 4th day of NOVEMBER, 1977.

IT IS SO ORDERED this 5th day of OCTOBER, 1977.

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Blanche C. Bersch
BLANCHE C. BERSCH
Secretary-Treasurer

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L-13759

PROPOSED DECISION

This matter came on regularly for hearing before Ronald M. Gruen, Administrative Law Judge of the Office of Administrative Hearings, on June 16 and 17, 1977. David Chandler, Deputy Attorney General, represented the complainant. Respondent appeared and was represented by his counsel, John W. Kennedy, Jr., Esq. Oral and documentary evidence and evidence by stipulation having been received and the matter submitted, the Administrative Law Judge finds the following facts:

I

Complainant, Joseph P. Cosentino, M.D. is the Acting Executive Secretary of the Board of Medical Quality Assurance and made the Accusation in his official capacity.

II

On July 12, 1967, respondent John L. Werner, M.D. was issued a Physician's and Surgeon's Certificate by the Board of Medical Examiners, predecessor to the Board of Medical Quality Assurance, and at all times mentioned herein, respondent was, and now is, licensed to practice medicine and surgery in the State of California.

III

A. On August 31, 1976, in the Superior Court of San Bernardino County, in case No. 33154, "People v. Werner," respondent pled nolo contendere to one count of soliciting to commit a crime in violation of section 653(f) of the Penal Code. As a consequence of entry of the plea, judgment was pronounced against respondent as follows: Probation was granted for a period of three (3) years and respondent was ordered to pay a fine of \$1,600.

B. The crime which respondent solicited was the murder of his ex-wife, in violation of section 187 of the Penal Code, an act involving moral turpitude.

IV

Pursuant to section 2383 of the Business and Professions Code the circumstances surrounding the commission of the above mentioned crime are that respondent coldly and calculatingly engaged in a well-thought out plan to have his ex-wife with whom he was cohabiting, murdered by a professional killer for \$3,000. His motive related to custody problems involving the couple's three minor children.

The individual whom respondent believed to be the hired professional killer was in fact an undercover police officer.

Respondent was apprehended by the police after final arrangements ostensibly had been made for his ex-wife's demise.

V

Respondent is 38 years of age, and continues to reside with his ex-wife, and their three children ages 9, 11 and 13. He is board certified in radiology and nuclear medicine. He is presently in group practice with four other radiologists in San Bernardino, and specializes in diagnostic radiology in the area of cancer research. He is not a primary care physician. Physicians who testified for respondent state that he is a competent

radiologist. However the misconduct herein leaves the record replete with unanswered questions relating to the soundness and trustworthiness of his personal and professional judgment.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Cause to suspend or revoke respondent's Physician's and Surgeon's certificate exists pursuant to sections 2360 and 2372 of the Business and Professions Code for violation of sections 2361(a), (d) and (e) of said Code.

II

The crime for which respondent was convicted, constitutes unprofessional conduct within the meaning of section 2383 of the Business and Professions Code and said crime is substantially related to the qualifications, functions or duties of a physician within the meaning of section 490 of the Business and Professions Code.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Physician's and Surgeon's certificate heretofore issued to respondent, John L. Werner, M.D., is hereby revoked; provided, however, that respondent may resume the practice of medicine in accordance with the following terms and conditions:

1. Respondent shall be examined by a psychiatrist priorly approved by the Division of Medical Quality, Board of Medical Quality Assurance, and respondent shall resume the practice of medicine, only if (a) said psychiatrist reports to the Division that respondent is capable of practicing medicine, and (b) said report is approved by the Division, and (c) respondent is notified in writing of such approval, thereby giving respondent the right to resume practice.

shall be on probation for a period of five (5) years on the following terms and conditions of probation;

2. Respondent shall commence psychotherapy and remain under the supervision and direction of a psychiatrist approved by the Division, and shall continue treatment until discontinuance shall be approved by the Division, and while respondent is under the care of said psychiatrist, respondent shall provide that said psychiatrist shall render quarterly reports to the Division as to the progress of respondent.

3. Respondent shall comply with all laws of the United States and of the State of California and its political subdivisions, and all rules and regulations of the Board of Medical Quality Assurance of the State of California;

4. Respondent shall practice in a supervised, structured environment under the direct supervision of another licensee. Said environment must be approved by the Division or its designee.

5. Respondent shall comply with the Probation Surveillance Program and cooperate with any agent of the Board operating thereunder.

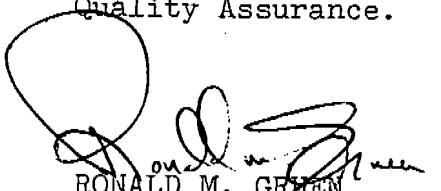
6. Respondent shall submit to the Division, at quarterly intervals, an affidavit that he has fully and faithfully complied with all the terms and conditions of probation imposed by this order, to begin ninety (90) days after its effective date.

7. Respondent shall report in person to the Division annually at the times and places to be designated by the Executive Secretary of the Board. It shall be the responsibility of respondent to request of the Executive Secretary such available times and places.

Upon full compliance with the terms and conditions herein set forth and upon the expiration of the terms of probation, the certificate of respondent to practice medicine and surgery shall

the event that respondent violates or fails to comply with any of the terms and conditions of this order, the Division of Medical Quality, Board of Medical Quality Assurance, after notice to respondent and an opportunity to be heard may terminate said probation and revoke said certificate effective immediately or make such other order modifying or changing the terms of probation herein as it deems just and reasonable in its discretion.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter as a result of the hearing had before me on the above dates at San Bernardino, California, and recommend its adoption as the decision of the Division of Medical Quality, Board of Medical Quality Assurance.



RONALD M. GREEN,
Administrative Law Judge
Office of Administrative Hearings

DATED: July 19, 1977

RMG:jm

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2 Deputy Attorney General
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Telephone: 714-236-7774
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5 Attorneys for Complainant
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8 BEFORE THE DIVISION OF MEDICAL QUALITY
9 BOARD OF MEDICAL QUALITY ASSURANCE
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA
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13 In the Matter of the Accusation
14 Against:

15 JOHN L. WERNER, M.D.
312 Emerson
16 Upland, California

17 Physician's and Surgeon's
Certificate No. G 13437,

18 Respondent.
19

NO. D-1948

ACCUSATION

20 JOSEPH P. COSENTINO, M.D., Complainant, alleges:

21 1. He is the Acting Executive Director of the Board
22 of Medical Quality Assurance.

23 2. All section references are to the Business and
24 Professions Code.

25 3. On July 12, 1967, respondent was issued Physician's
26 and Surgeon's Certificate No. G 13437. The certificate is in good
27 standing at the present time.

1 Pursuant to Business and Professions Code sections
2 2360 and 2372, every certificate may be suspended or revoked
3 and every certificate holder may be placed on probation if he
4 has been found to have been guilty of unprofessional conduct.

5 5. Pursuant to Business and Professions Code section
6 2361, unprofessional conduct includes:

7 A. "Violating or attempting to violate, directly
8 or indirectly, or assisting in or abetting the violation
9 of, or conspiring to violate, any provision or term of
10 this chapter." Bus. & Prof. Code §2361(a).

11 B. "Gross immorality." Bus. & Prof. Code §2361(d).

12 C. "The commission of any act involving moral
13 turpitude, dishonesty, or corruption, whether the act is
14 committed in the course of the individual's activities as
15 a certificate holder, or otherwise, or whether the act is
16 a felony or a misdemeanor." Bus & Prof. Code §2361(e).

17 6. Business and Professions Code section 490 provides:

18 "Each board, when considering the suspension or
19 revocation of a license under this code on the ground
20 that the licensee has been convicted of a crime, shall
take into account the relationship of the crime to the
licensed activity."

21 7. Pursuant to Business and Professions Code section
22 2383, "The conviction of either (1) a felony or (2) any offense,
23 misdemeanor or felony, involving moral turpitude constitutes
24 unprofessional conduct within the meaning of this chapter . . .
25 A plea or verdict of guilty or a conviction following a plea of
26 nolo contendere made to a charge of a felony or of any offense
27

1 involving moral turpitude is deemed to be a conviction within
2 the meaning of this section "

3 8. Respondent John L. Werner, M.D., is guilty of
4 unprofessional conduct which is substantially related to the
5 qualifications, functions and duties of his profession on
6 account of the following:

7 On or about August 31, 1976, in the Superior Court
8 of San Bernardino County, in Case No. 33154, People v. Werner,
9 respondent pled nolo contendere to one count of soliciting
10 to commit a crime in violation of Penal Code section 653(f). As
11 a consequence of entry of the plea, judgment was pronounced
12 against respondent as follows: Probation was granted for a
13 period of 3 years and respondent was ordered to pay a fine
14 of \$1,600.

15 The crime which respondent solicited was the murder
16 of his wife, in violation of Penal Code section 187.

17 The conduct alleged constitutes conviction of
18 a crime involving moral turpitude under sections 490 and 2383
19 and is grounds for discipline of respondent's certificate under
20 section 2361(a). The above conduct also constitutes gross
21 immorality which is grounds for discipline under section 2361(d)
22 and commission of an act involving moral turpitude, which is
23 grounds for discipline under section 2361(e).

24 WHEREFORE complainant prays a hearing be held on the
25 matters alleged and after a hearing, that the Division of
26 Medical Quality enter an order revoking or suspending respondent's
27

1 certificate, or placing respondent on probation or taking
2 such other action as the Division deems proper.

3 DATED: 2/8/77
4

5 *Joseph P. CoSENTINO*

6 JOSEPH P. COSENTINO, M.D.
7 Acting Executive Director
8 Board of Medical Quality Assurance
9 State of California

10 Complainant
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